actuated by malice or self-interest. Compare the discussion of privilege and motive in tort actions in (1917) 27 YALE LAW JOURNAL, 263.

TRUSTS—RESULTING TRUSTS—INDIRECT PARTIAL PAYMENT BY WIFE FOR LAND CONVEYED TO HUSBAND.—The defendant wife inherited from her father a specific portion of an estate. She did not actually receive the land, but the value thereof was credited to her husband on a purchase of land from the estate by him and in his name. *Held,* that there was a resulting trust in the land in favor of the wife for a proportionate undivided interest. *Hinshaw v. Russell* (1917) 280 Ill. 235, 117 N. E. 406.

The general rule is that where two or more pay the consideration and the conveyance is taken in the name of only one, a resulting trust is created in favor of the others *pro tanto*. *Barrows v. Bohan* (1874) 41 Conn. 278; *Moultrie v. Wright* (1908) 154 Cal. 520, 98 Pac. 257; 1 Perry, *Trusts* (6th ed.) sec. 126. Though the wife paid no money actually in the principal case, the analogy seems close enough to warrant the extension of the general rule to such cases. As regards the relationship, there is a presumption of a gift where one pays for a conveyance to another whom he is under a duty to support. *Dyer v. Dyer* (1788, Exch.) 2 Cox Ch. 92; *Bailey v. Dobbins* (1903) 67 Neb. 548, 93 N. W. 687. But where the conveyance is to the husband and payment is made by the wife, this presumption does not apply. *Silling v. Todd* (1911) 112 Va. 802, 72 S. E. 682; *In re Mahin's Estate* (1913) 161 Ia. 459, 143 N. W. 420. While the conclusion in the principal case seems sound, the language of the opinion leaves much to be desired. For example, the court quotes with apparent approval: "This trust arises, not from a contract or agreement of the parties, but from their acts," and "Its very name implies that it is independent of any contract, and is raised by the law itself upon a particular state of facts." Strictly speaking a resulting trust of the kind under consideration is based upon a presumption that the one furnishing the consideration for the conveyance *intended* that the property should be held for him. This presumption may be rebutted by evidence showing that this was not the intention. H. F. Stone, *Resulting Trusts and the Statute of Frauds* (1906) 6 COLUMBIA L. REV. 326, 330. Much confusion has proceeded from a failure to distinguish clearly between such trusts, based on assumed intention, and constructive trusts, created by the law regardless of intention. The principal case helps little to clear up this confusion.

WILLS—INCORPORATION BY REFERENCE—PREVENTING LAPSE OF POWER OF APPOINTMENT BY INCORPORATING DONEE'S WILL.—The testator's will gave his wife a power of appointment and provided that in case they should die in a common disaster his will should be construed on the assumption that she survived him. The wife executed a will at the same time, attempting to exercise the power. Husband and wife were lost at sea with the Lusitania. *Held,* that the property passed under the husband's will to the person in whose favor the wife had attempted to exercise the power, her will being incorporated by reference into his. Crane, McLaughlin and Cuddeback, JJ., *dissenting*. *In re Fowles' Will* (1918, N. Y.) 118 N. E. 611. See COMMENTS, p. 673.

WILLS—LEGACIES CONDITIONED ON NOT CONTESTING WILL—WAIVER OF FORFEITURE.—A will created a trust for the testator's children and directed that if any child should contest the probate or operation of the will, the provision for such child should be void and his share should pass to the other children. All the children appealed from the order of probate on the ground that the testator

was of unsound mind. Later they abandoned this contention and stipulated that the only question to be decided was one concerning the construction of a certain part of the will. In a later suit by the trustee to obtain a declaration of the validity of the trust and a construction of the will, the children requested that the trust be carried out. *Held,* that in the absence of evidence of probable cause for the contest the beneficial provisions for the children were forfeited, that such forfeiture could not be waived, and that the property in the hands of the trustee must be distributed as intestate estate. *South Norwalk Trust Co. v. St. John* (1917) 92 Conn. 168, 101 Atl. 961.

Testators frequently try to prevent litigation by directing a forfeiture of the interest of any beneficiary who shall contest the will. The validity of such a provision appears not to have been previously determined in Connecticut. Nor are the authorities elsewhere very numerous or entirely consistent. Rood, *Wills,* secs. 616–622. Generally American courts have enforced such conditions without regard to whether there is a gift over of the forfeited legacy or devise. *Estate of Hite* (1909) 155 Cal. 436, 101 Pac. 443; but see *Matter of Wall* (1912, N. Y. Surr.) 76 Misc. 106, 136 N. Y. Supp. 452. Of course a suit to obtain a construction of the will does not violate the ordinary forfeiture clause. *Black v. Herring* (1894) 79 Md. 146, 28 Atl. 1063. But a contest as to testamentary capacity, undue influence, or the formal execution of the will clearly falls within the literal terms of the condition. Nevertheless a substantial conflict of authority exists whether a forfeiture should be enforced when such contest is carried on in good faith and on reasonable grounds. The principal case adopts the argument that to give effect to the condition under such circumstances would tend to intrench fraud and undue influence, and would be contrary to a sound public policy. *Friend's Estate* (1904) 209 Pa. St. 442, 58 Atl. 853, 68 L. R. A. 447, *accord; Estate of Miller* (1909) 156 Cal. 119, 103 Pac. 842, *contra.* But as the record contained no evidence whether the contest was begun in good faith and with probable cause, the actual decision was in favor of forfeiture. In holding further that such forfeiture could not be waived, the court expressly refused to follow a Tennessee decision directly in point. *Williams v. Williams* (1885, Tenn.) 15 Lea, 438. No other case has been found raising precisely this question.

It may be suggested, however, that not only on the question of waiver, but with regard to the effect of the forfeiture clause itself, the case called for further analysis. The question of waiver would seem to depend on whether the provision for forfeiture is to be construed as a common law condition subsequent, like a condition for re-entry, which would require some action on the part of the testator's heirs to enforce the forfeiture, and hence, it would seem, could be waived, or as a limitation on the estate created which, if it took effect at all, would be self-executing. In the principal case the language of the forfeiture provision seems most consistent with a limitation attached to each child's share by way of executory devise to the other children. But the evident general intent of the testator would require that if more than one child contested the will, each one so contesting should not only forfeit his original interest, but should be excluded from any share in the executory devise. What is to happen, then, when all the children join in the contest? Failure of an executory devise does not necessarily mean that the prior estate continues. *Doe v. Eyre* (1848, Exch. Ch.) 5 C. B. 713; *Robinson v. Wood* (1858) 27 L. J. Ch. 726; *O'Mahoney v. Burdett* (1874) L. R. 7 H. L. 388. Where the property is realty and the prior estate is in fee, the doctrine supported by the authorities just cited is perhaps open to criticism, but in other cases there seems no reason to doubt that the testator *could* make a limitation by which the interests first given would be *ipso facto* terminated by the happening of the condition, whether or not the gift over

could take effect. See Gray, *Perpetuities* (3d ed.) secs. 250, 78. This was in substance, if not in terms, the construction adopted by the Connecticut court. The result, however, was to give to the children as heirs, in fee simple and free of any trust or future limitation, the same property which they had forfeited as equitable legatees subject to gifts over on failure of issue. It may be conceded that the testator apparently did not consider the possibility of all the children contesting; but it seems more in accord with his probable general intent to conclude that the forfeiture was not to take effect unless there was some child qualified, by refraining from contest, to receive the gift over. It is suggested that this result could be accomplished, independently of any waiver, and in strict accord with legal principles, by holding that the estates first given were to be cut short only by the operation of the executory devises, and that since an express or implied condition of all the executory devises had failed, the prior estates continued. *Cf. Harrison v. Foreman* (1800, Ch.) 5 Ves. 207; *Jackson v. Noble* (1838, Ch.) 5 Keen 590; *Hodgson v. Halford* (1878, Eng. V. C.) 11 Ch. D. 959; *Drummond's Ex'r. v. Drummond* (1875, Ch.) 26 N. J. Eq. 234.

WORKMEN'S COMPENSATION ACT—CONFLICT OF LAWS—FOREIGN CONTRACT OF EMPLOYMENT.—A workman employed in New York for labor within that state was subsequently sent to work in Connecticut pursuant to a special arrangement as to wages entered into with his employer at the latter's New York office. Nothing was said about compensation in case of injury. The workman was injured at his work in Connecticut. *Held,* that the Connecticut Workmen's Compensation Act was applicable. *Banks v. Albert D. Howlett Co.* (1918, Conn.) 102 Atl. 822.

This case presents a complication of two vexed questions, both of which would be avoided under the tort rule of construction of workmen's compensation acts, adopted in *Gould's Case* (1913) 215 Mass. 480, 102 N. E. 693. The first relates to the rule applicable to a contract where a place of performance distinct from the place of making is contemplated. In applying the rule of the place of performance, the principal case follows the established Connecticut doctrine. *Chillingworth v. Eastern etc. Co.* (1895) 66 Conn. 306, 33 Atl. 1009. The second question involves the choice between two possibly applicable compensation statutes, where an employment transcends state lines. In those jurisdictions where the contract theory of these statutes is adopted, the authorities are uniform in applying the statute of the forum to extra-territorial injuries arising under domestic contracts. *Post v. Burger* (1916) 216 N. Y. 544, 111 N. E. 351; *Kennerson v. Thames Towboat Co.* (1915) 89 Conn. 367, 94 Atl. 372; *Rounsaville v. Central Ry. Co.* (1915, Sup. Ct.) 87 N. J. L. 371, 94 Atl. 392; *Grinnell v. Wilkinson* (1916, R. I.) 98 Atl. 106. The inverse case of local injuries arising under foreign contracts has given rise to three divergent lines of decisions. Sometimes the *lex loci contractus* has been consistently held to govern, and the foreign statute applied. *Schweitzer v. Hamburg-American Line* (1912, N. Y. Trial T.) 78 Misc. 448, 138 N. Y. Supp. 944. See *Kennerson v. Thames Towboat Co., supra.* In one state it is held that the sending of the employee across state lines without dissent expressed pursuant to the terms of the compensation act of the new place of employment, creates a new contractual or quasi-contractual relationship, governed by the law of the latter place. *American Radiator Co. v. Rogge* (1914, Sup. Ct.) 86 N. J. L. 436, 92 Atl. 85, 94 Atl. 85. Other courts, while admitting that the foreign statute would be controlling if applicable, have resorted to the theory last mentioned, when the *lex loci contractus* happened not to possess an applicable statute. *Douthwright v. Champlin* (1917) 91 Conn. 524, 100 Atl. 97. By basing its decision on the finding of a real novation at the beginning of the work in Connecticut, the